



Investigative Training Curriculum for Supervisors and Managers

**Washington State Department of Personnel
Human Resource Development Services**

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Introduction

The purpose of this document is to implement *Executive Order 98.02, Training and Protocols for State Investigators*. The Executive Order was a result of the work done by the SHB 1632 Investigative Study Group and their 1997 summary report. This Curriculum Outline for Investigative Training for Supervisors and Managers (ITSM) has been prepared to address the Study Group's recommendations with respect to the *Personnel Core* as originally titled in their report. The Study Group identified the need to provide more training for supervisors and managers **who are otherwise not investigators**, but due to the nature of their jobs and applicable policies, procedures or collective bargaining agreements, may occasionally initiate or conduct investigations involving complaints or allegations of employee wrongdoing.

With the above in mind, this outline provides consistent statewide guidelines for this topic and serves as the foundation for continued development of in-service supervisory and managerial training programs and tools by all state agencies and institutions of higher education. The Washington State Department of Personnel – Human Resource Development Services Division, (DOP-HRDS) through the Investigator Training Program is responsible for and will develop training materials to support this outline. These materials will be made available for statewide distribution and use. In addition, all state agencies, boards, commissions and institutions of higher education may at their discretion incorporate this curriculum in whole or in part into their existing supervisory and/or managerial development activities.

Questions about this document or other components of investigator training should be directed to Bill Zachmann, Investigative Training Coordinator at (360) 664-1926, or at billz@dop.wa.gov. This document can also be downloaded from DOP's homepage at www.wa.gov/dop/investigate.

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Scope of Authority

(Related Topics: Complaint Analysis, Torts and Personal Liability and Rights of People Being Interviewed)

Teaching Objectives

Provide supervisors/managers with the knowledge and skills to initiate and/or conduct investigations consistent with their agency's policies, procedures and collective bargaining agreements and their position's authority.

Learning Outcomes

Supervisors/managers will be able to:

1. Identify by name/number the statutes, rules, policies, procedures and applicable collective bargaining agreements (CBA's) that authorize their investigative activities.
2. Give brief examples of investigative activities that are within and not within their own position's scope of authority, based on the items listed in Learning Outcome #1, above.

Ethics

(Related topic: Torts and Personal Liability)

Teaching Objectives

Provide supervisors/managers with a general understanding and specific examples of how Chapter 42.52 RCW-Ethics in Public Service applies to employee investigations.

Learning Outcomes

Supervisors/managers will be able to identify and provide examples of unethical investigative conduct with regard to the following:

1. Conflicts-of-interest (activities incompatible with duties).
2. Disclosure of confidential information and improperly concealed records.
3. Improper acquisition of information.
4. Improper use of state resources
5. Financial interests
6. Compensation for outside activities
7. Acceptance of gifts

Complaint Analysis

(Related topics: Referrals, Tort and Personal Liabilities, Interviewing, and Public Disclosure and Confidentiality)

Teaching Objective

Provide supervisors/managers with the knowledge and ability to identify, analyze and evaluate the various components of complaints, allegations or observed actions of employee wrongdoing in order to decide what actions to take next.

Learning Outcomes

Supervisors/managers will be able to:

1. Explain the importance of using a simple complaint/allegation analysis system (“Who, What, When, Where, Why and How?”).
2. Describe how to document complaints/allegations and how to identify any significant components. (E.g. Is it serious and does it need immediate attention? Is the employer obligated to report certain kinds of allegations?)
3. Understand the importance of contacting the organization’s human resources division, especially if the matter is beyond the supervisor’s/manager’s scope of authority.
4. Identify whether complaints/allegations are within the organization’s scope of authority to investigate or if the matter should be referred to another entity (Related Topics: ***Referrals***).
5. Identify resources (statutes, codes, collective bargaining agreements, organizational policies or manuals) used to evaluate and judge the relative importance and urgency for dealing with complaints/allegations of employee wrongdoing.
6. Provide examples of handling complaints that could affect employee relations within the organization’s workforce. (E.g. Time and place for intake and questioning a complainant, dealing with requests for confidentiality, documenting that the complainant was asked to disclose all concerns.)

Referrals

Teaching Objectives

To provide supervisors/managers with information about:

1. Factors or indicators when complaints or findings from ongoing investigations should be referred to another entity, especially if a violation of a criminal code may have occurred.
2. Other entities that may investigate allegations of state employee wrongdoing and the nature of their jurisdiction (Washington State Patrol, State Auditor's Office, Executive Ethics Board, Human Rights Commission, Equal Employment Opportunity Commission, local law enforcement authorities and federal entities.)
3. Referrals to other entities for reasons that may or may not be directly related to the alleged employee wrongdoing and resultant investigation, such as the Employee Advisory Service or local physical or mental health services, etc.
4. Common practices or methods used to refer a case to another entity.
5. Coordinating with other entities in the event of a referral.

Learning Outcomes

Supervisors/managers will be able to:

1. Explain or describe the nature of their investigative role.
2. Identify when a complaint, case or investigation should be referred to another entity:
 - Because it pertains exclusively to another entity's jurisdiction.
 - Because it pertains to multiple jurisdictions or joint investigations are appropriate.
 - Because there may be a conflict of interest.
3. Identify acceptable methods for referring and transferring a case to another entity.
4. Explain a general process for drafting a referral document.

Investigative Planning and Strategy

NOTE: This topic is intended ONLY for those supervisors/managers who, via the organization's internal policies, procedures and applicable collective bargaining agreements, have been identified as being principally responsible for conducting an investigation of a complaint or allegation of employee wrongdoing.

Teaching Objective

Provide supervisors/managers with the knowledge, skills and abilities to successfully plan and conduct investigations.

Learning Outcomes

Using skills acquired from the "Complaint Analysis and Referrals" topic, supervisors/managers will be able to:

1. Provide examples of the basic elements and framework of an investigative plan.
2. Identify the basic procedures or processes that govern investigations.
3. Provide examples of tools and methods commonly used to conduct investigations.
4. Identify or give examples of resources needed to implement an investigative plan.
5. Demonstrate a method for preparing and implementing a sample timeline to conduct an investigation.
6. Explain a method that can be used to show or determine when all elements of an investigative plan have been completed.
7. Give an example of how, why, and to whom they might later refer a case if their investigation involves matters beyond their jurisdiction.

Rights of Entry

NOTE: This topic is intended ONLY for those supervisors/managers who, via the organization's internal policies, procedures and applicable collective bargaining agreements, have been identified as being principally responsible for conducting an investigation of a complaint or allegation of employee wrongdoing.

Teaching Objectives

Provide supervisors/managers with information about or examples of:

1. Situations away from the workplace that may complicate or prevent access to interviewing a subject employee, obtaining evidence or gathering other witness information.
2. What to do if access to interviewees or evidence away from the workplace is complicated, denied or otherwise appears to be restricted.

Learning Outcomes

Supervisors/managers will be able to:

1. Briefly explain the reasons for constitutional and statutory entry authority.
2. Give examples of and explain basic techniques for gaining entry (without civil warrants).
3. Provide examples of situations where access is allowable to employer furnished spaces.
4. Provide examples of situations where access may be legally restricted or denied.

Tort and Personal Liability for Errors

(Related Topics: Interviewing Techniques)

Teaching Objectives

Provide supervisors/managers with:

1. Information about how to properly handle a complaint or allegation, and/or how to conduct the investigation to minimize or reduce the risk of tort claims or personal liabilities for errors.
2. Information about the processes that should be followed within their organization if supervisors/managers are personally named in civil suits or if they become aware that a tort claim has been filed against the state by those being investigated.

Learning Outcomes

Supervisors/managers will be able to:

1. State the general purpose of tort laws and explain how improper conduct may lead to a civil suit being filed against them or a tort claim being filed against the state.
2. Give examples of statements that may be slanderous, libelous or that may defame character.
3. Give examples of physical harm to property/persons, and of promises that may be made but cannot be upheld (limited confidentiality).
4. Give examples of investigative behavior that is, and is not, in “good faith and within the scope of employment”.
5. Generally explain the process to follow when a supervisor or manager is named in a lawsuit or when they become aware of a situation where a tort claim has been filed against the state.

Interviewing Techniques
Respecting Constitutional Rights
Rights of People Being Interviewed
Laws of Arrest

NOTE: This topic is intended ONLY for those supervisors/managers who, via the organization's internal policies, procedures and applicable collective bargaining agreements, have been identified as being principally responsible for conducting an investigation of a complaint or allegation of employee wrongdoing.

Teaching Objectives

- **Interviewing Techniques**

Provide supervisors/managers with the knowledge, skills and ability to conduct effective interviews and take notes during investigations of alleged employee wrongdoing.

- **Respecting Constitutional Rights; Rights of People Being Interviewed; Laws of Arrest**

Explain the importance of respecting constitutional rights and the rights of the people (employees and witnesses) being interviewed by supervisors/managers.

Provide supervisors/managers with information about:

- The laws of arrest and how to avoid creating “false arrest” scenarios.
- An employee's responsibility to provide information during an internal investigation consistent with protections against self-incrimination (**Garrity v. New Jersey**).
- An employee's right to union representation during an internal investigation when the employee may reasonably expect punitive action (**NLRB v. Weingarten Inc.**).
- The Loudermill Hearings process for personnel investigations and discipline.
- The employer's right to access to employer furnished spaces or equipment assigned to or under the responsibility of the employee, such as records and computer files, desks, briefcases, lockers, cabinets, vehicles and other equipment provided by the employer.
- An employee's expectation of privacy as a public citizen relating to access to personal effects in the office place such as personal briefcases, handbags, purses, backpacks, vehicles, etc.
- The general rights granted to employees via collective bargaining agreements or agency policy/procedure (Goodman v Employment Security, others).

- The employee's right to pursue a defense or to contact witnesses. [From a PRB or PAB case, name unknown at this time, where an employee was barred from contacting others during the investigation of his misconduct and the Board found this unreasonably precluded the employee's ability to defend himself.]

Learning Outcomes

- **Interviewing Techniques**

Supervisors/managers will be able to describe or explain:

1. A basic interview methodology and the importance of preparing questions in advance of an interview
2. A sample outline for the interview process.
3. A sample method for communicating the legal authority to conduct an interview.
4. The characteristics of a good interviewer and a good interview, and the importance of asking non-leading, open-ended questions.
5. The importance of taking notes to document verbal and non-verbal responses.
6. How to analyze verbal responses and non-verbal communication cues.
7. Inhibitors and facilitators of communication.
8. The importance of taking factual investigative notes to avoid creating a liability.

- **Respecting Constitutional Rights; Rights of People being Interviewed ; Laws of Arrest**

Supervisors/managers will be able to describe or give examples of:

1. How to respect an individual's constitutional rights during an interview with regard to their right against self-incrimination, right to counsel, right to due process and other common law issues (privacy, outrageous conduct, and defamation).
2. How to avoiding real or apparent false arrest scenarios.
3. How employee investigations should be conducted with respect to *Garrity v. New Jersey*; *NLRB v. Weingarten* and *Loudermill*.
4. The importance of conducting employee investigations consistent with Collective Bargaining Agreements and organizational policy based on recent examples from Washington State Personnel Appeals Board decisions, such as Griffin vs. DSHS [D88-072] and Goodman v. Employment Security Department.

Evidence: Gathering, documenting, developing and maintaining.

NOTE: This topic is intended ONLY for those supervisors/managers who, via the organization's internal policies, procedures and applicable collective bargaining agreements, have been identified as being principally responsible for conducting an investigation of a complaint or allegation of employee wrongdoing.

Teaching Objectives

Provide supervisors/managers with information about:

1. The general principles of evidence and how evidence is used in administrative investigations, disciplinary actions, administrative hearings and court hearings.
2. The general procedures used to properly gather, document, develop, and maintain evidence.

Learning Outcomes

Supervisors/managers will be able to:

1. Give examples of direct and circumstantial evidence (evidence classification).
2. Explain the general rule of evidence, with regard to admissibility, materiality and relevancy (logical and legal).
3. Provide a definition or give examples of types and forms of evidence from the following list:
 - Testimonial (lay [non-expert] and expert)
 - Real (documentary and physical)
 - Demonstrative
 - Judicial
4. Provide an example of hearsay, explain why hearsay is generally inadmissible, and give an example of an exception to hearsay inadmissibility.
5. Provide examples of methods for gathering evidence based on the following list:
 - Interviews
 - Public documents
 - Informants and third party information
6. Give examples of how to (in order of importance):
 - Organize evidence
 - Document and authenticate evidence
 - Identify the source(s) of ownership and dates of evidence
 - Properly handle evidence
 - Maintain control of evidence (chain of custody)
 - Establish a chronology for collected evidence

Dealing with Aggressive Behavior
Avoiding and Minimizing Physical Risk
Right to Self-defense

Teaching Objectives

Provide supervisors/managers with the ability to recognize when the behavior of people being investigated becomes aggressive and/or physically threatening and how to deal with it.

Learning Outcomes

Supervisors/managers will be able to:

1. Provide examples of how to recognize signs of aggressive and physically threatening behavior from someone being interviewed and/or investigated.
2. Explain the importance listening to their subject's tone of voice, as well as their own.
3. Provide examples of techniques to minimize, reduce or eliminate the occurrence of aggressive or physically threatening behavior, including intervention techniques.

Preparing and Writing Investigative Reports

NOTE: This topic is intended ONLY for those supervisors/managers who, via the organization's internal policies, procedures and applicable collective bargaining agreements, have been identified as being principally responsible for conducting investigations of complaints or allegations of employee wrongdoing.

Teaching Objectives

Provide supervisors/managers with the information about writing factual and comprehensive investigative reports, and to provide them with the knowledge and understanding that:

1. Investigative reports are used to convey facts and findings enabling others to decide whether an allegation of employee wrongdoing can be substantiated.
2. Drawing conclusions/stating opinions in an investigative report should only be done when policies, procedures or collective bargaining agreements require conclusions or opinions.
3. Investigative reports may be used to provide information to a variety of external audiences.

Learning Outcomes

Supervisors/managers will be able to:

1. Identify basic components of factual narrative reports.
2. Explain how good reports can improve investigative thoroughness and accuracy.
3. Explain why reports need to include the “who, what, when, where, how”, and if known or relevant the “why” aspects of the investigation, such as:
 - Who is involved in the allegation and in the investigation [complainants, witnesses and subject employee(s) and other employee(s)]?
 - What is the reason for the investigation?
 - What was alleged to have occurred or what is the nature of the complaint?
 - What statutes, regulations and/or organizational policies/procedures are involved?
 - When and where [place(s)/time(s)] did the alleged incident(s) occur?
 - How did events unfold or occur?
 - If known, why did the complaint/allegation/misconduct occur?
 - What are the detailed observation statements from witnesses relative to the investigation?
 - What is the supporting evidence?
 - Where and how is evidence documented?
 - When and where did the ensuing investigation take place?
 - Who participated in the development of the investigation and preparation of the report?

Public Disclosure and Confidentiality

Teaching Objectives

Provide supervisors/managers with a working knowledge and understanding of:

1. Public Disclosure statutes, specifically RCW 42.17.250 Public Records, as it applies to employee investigations, including protections for records related to an ongoing investigation, redacting of privacy information, status of final reports, etc.
2. How due process rights may impact the confidentiality of witnesses in an investigation.
3. The general process and timeframes when public records related to an investigation can be disclosed and made available for public review.
4. The importance of confidentiality and how to maintain it during an investigation.
5. The confidentiality protections afforded in a Whistleblower investigation regarding the Whistleblower and other witnesses.
6. The importance of providing complainants with post-investigative findings, when such information is requested by them and when providing it is consistent with public disclosure policies.

Learning Outcomes

Supervisors/managers will be able to:

1. List or give examples of public records.
2. Give an example of a public record that would typically be available for public review during an investigation and after an investigation is closed.
3. Give an example of a public record that would typically be exempt from public disclosure, either during or after an investigation is closed.
4. Explain why the maintenance of confidentiality is important during the investigative process, but why confidentiality may not be maintained indefinitely.
5. Explain the importance of coordinating requests for disclosure of public documents with the agency's Public Disclosure Officer or person with similar responsibilities, including requests from the news media.

Testimony

NOTE: This topic is intended for all supervisors and managers who, via the organization's internal policies and procedures or their personal knowledge of facts related to an investigation of alleged employee wrongdoing, can be expected or may be called upon to testify at an administrative or other legal procedure.

Teaching Objectives

Provide supervisors/managers with:

1. Information about the principles of testimony with regard to the investigative processes and evidentiary matters.
2. A working knowledge to successfully testify in administrative hearings and other court proceedings.
3. Information about basic tactics defense counsel may use to undermine their professional credibility or how they could be impeached while testifying.

Learning Outcomes

Supervisors/managers will be able to:

1. Identify what they should and should not do when testifying in formal and informal proceedings (manner of dress, speech, body-posture and courtroom demeanor, short and direct answers to the question versus avoidance of volunteering information or rambling).
2. Describe or explain, via an outline or similar approach, how and why the investigative process was used in their investigation and how to provide evidentiary testimony.
3. Describe or provide examples of how a defense attorney might undermine their credibility or impeach them as a witness (See WA State Attorney Generals Office handout on testimony).

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